

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
The Petition of KMC Telecom Inc.) CC Docket No. 99-142
For Declaratory Ruling.)

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COMMENTS OF SPRINT CORPORATION

On April 26, 1999 KMC Telecom Inc. ("KMC") filed a petition with the Commission requesting that it issue a declaratory ruling proclaiming, *inter alia*, that termination penalties imposed by incumbent local exchange companies ("ILECs") are unlawful. The Commission noticed the petition (DA 99-836, rel. May 4, 1999), and called for comments on KMC's request. Sprint Corporation ("Sprint") hereby respectfully submits its comments on the subject petition.

KMC'S PETITION

In its petition, KMC alleges that "excessive" termination liabilities imposed by ILECs for long term local service arrangement should be declared unlawful. Although KMC never defines "excessive," it appears that KMC is in fact requesting that all early termination liabilities imposed by the ILECs, whether contained in a contract or tariff, be prohibited. Because KMC's petition is unnecessarily broad and does not reasonably balance the needs of the customer, the ILEC, and the CLEC, the Commission should deny KMC's request. Instead, the Commission should adopt a more balanced

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approach, set forth below, to address the situation facing new entrants such as KMC as they begin competing in what has been a monopoly environment.

KMC's approach to addressing the existence of termination liabilities in long term agreements is the equivalent of applying a tourniquet to a paper cut. KMC requests that the Commission "... declare unlawful termination penalties imposed by ILECs, [to] prohibit enforcement of these ILEC termination penalties, and [to] require the removal of ILEC termination from ILEC state tariffs until such time as customers have a more genuine competitive choice than currently exists." (KMC petition at p.1). Toward that end, KMC urges the Commission to take such drastic measures as finding that termination liabilities violate Section 253 of the Act requiring the removal of barriers to entry and preempting state authority over ILEC tariffs that contain such charges (petition at p.10). What is lacking from KMC's petition, however, is any evidence that would support complete elimination of all early termination liabilities. KMC fails to offer even anecdotal evidence of actual ILEC misuse of termination liabilities. Neither does it offer any proof that ILECs are using competitive local service to leverage their non-competitive services in long-term arrangements. KMC does not even attempt to offer the most basic information regarding the universe of customers potentially effected by this situation.

Sprint acknowledges that some long-term contracts or service arrangements, with their attendant termination liabilities, have the potential to be used as tools to defeat emerging competition. However, Sprint also recognizes that long term contracts that spread installation costs over a period of months or years can be extremely beneficial to customers – and, correspondingly, that the untimely

termination of such contracts would be financially detrimental to the involved ILEC absent some early termination liability. Therefore, while KMC attempts to frame the issue surrounding the use of termination liabilities as a straightforward one, such is simply not the case. In practical effect, the adoption of the KMC's proposal would mean the end of long-term contracts, a situation Sprint believes no one, including KMC, would advocate.

The fact is that KMC's proposal ignores - or denies - entirely the realities of most long-term contractual arrangements. A LEC may incur substantial installation and implementation costs associated with the deployment of dedicated or special facilities in order to meet the customer's needs. In exchange for a long-term service commitment from the customer, the LEC may be willing to spread the payment of these charges over a period of time. KMC's proposal to suddenly introduce the elimination of termination liabilities would, however, allow the customer to void this long-term commitment - from which it has benefited - and cause the LEC to incur substantial losses associated with these installation costs. Adoption of KMC's proposal would ultimately force the telecommunications provider to collect all installation charges at the time the contract is implemented. As a result, many customers, finding themselves unable to pay significant up-front charges, may be forced to forego needed telecommunications services. Considering this likely outcome, Sprint is compelled to ask KMC who will benefit from the remedy it seeks?

SPRINT'S PROPOSAL

Sprint understands KMC's underlying concerns regarding termination liabilities and their potential misuse. Sprint's own CLEC has grappled with similar concerns. It is because of those concerns that Sprint offers what it believes to be a balanced response to the questions surrounding the application of termination liabilities. As the Commission is well aware, Sprint has ILEC operations in 18 states and is the largest ILEC other than the regional Bell Operating Companies ("RBOCs") and GTE. Moreover, Sprint's long distance division is responsible for the corporation's competitive local entry strategies. Consequently, within its own corporate structure, Sprint is continuously challenged to achieve balance in the development of its internal policies and business strategies. The Commission can, therefore, be assured that the position Sprint puts forth here for its consideration, unlike that proffered by KMC, fairly reflects the needs of competitive local exchange carriers ("CLECs") yet, unlike KMC's proposal, does not impose unreasonable burdens on ILECs.

Telecommunications carriers, both CLECs and ILECs, should be permitted to address customers' needs through the use of long-term contracts. Moreover, Sprint avers that reasonable termination liability provisions are a legitimate means of protecting the telecommunications provider against unjustified losses associated with early termination of such contracts. At the same time, Sprint asserts that long-term contracts should be subjected to a fresh look opportunity to minimize anti-competitive consequences. Such a fresh look policy must, however, be fair to the customer while limiting the ILEC's exposure to unrecovered, legitimately incurred costs.

Sprint proposes a fresh look rule that balances the interest of CLECs and ILECs by providing customer opportunities to opt-out of certain long-term contract obligations, while, at the same time, placing specific limitations on the contracts eligible for fresh look. The policy Sprint sets forth here is similar to that adopted by the Commission in the Expanded Interconnection Docket.¹ Patterned after fresh look opportunity adopted in that order², Sprint's proposal is divided into four sections: eligible contracts, fresh look window, customer notification and termination liabilities. While a summary of each tenet of the proposal is provided below, the proposal, in its entirety, is attached as Appendix A to these comments.

a) Eligible Contracts

Sprint's proposed plan calls for contracts or tariff provisions with terms of 180 days or more to be subject to fresh look. However, Sprint proposes two limitations on the services and contracts that should be eligible for fresh look. First, application of fresh look should be restricted to price regulated telecommunications services. Non-price regulated services have generally been found to be competitive. These services should not, therefore, be open to fresh look since they are – and have been- subject to direct competition.

¹ *In the Matter of Expanded Interconnection with Local Telephone Facilities*, 7 FCC Rcd 7369 (1992).

² In relevant part, the Commission's fresh look policy in the Expanded Interconnection case called for fresh look to be limited to customers with LEC special access arrangements with terms of three years or longer, that were entered into prior to the date of the Commission's order. The fresh look period lasted for 180 days from the date the first expanded interconnection arrangement was in place in a central office. A customer choosing to take advantage of that opportunity was still responsible for termination liabilities, but such charges would be limited to the difference between the amount the customer already paid and any additional charges the customer would have paid under a shorter term offering, plus interest at the prime rate.

Second, those contracts that were executed subject to a competitive bid situation between August 8, 1996 (this date represents six months after the adoption of the Telecommunications Act of 1996 and the date on which the Commission established the local competition rules) and the start of the fresh look window would be excluded from the fresh look provision. Including competitively bid contracts in a fresh look window would serve no other purpose than to give CLECs another opportunity to secure a customer who made a conscious decision to choose the ILEC as his/her telecommunications provider. Such an outcome would in no way advance competition but rather provide the CLEC an unwarranted competitive advantage.

b) Fresh Look Window

In determining the appropriate fresh look period, Sprint considered not only what would be fair to the CLECs and ILECs alike, but what would offer the most opportunity but least confusion, to the end user customers. In this vein, Sprint proposes a fresh look window for all ILECs in a state that begins sixty days after either this Commission or a Court grants interLATA authority under Section 271 to the incumbent RBOC, and continues for a 180 day period. Sprint believes this proposal eliminates any confusion that would undoubtedly accompany a fresh look window determined on a market-by-market basis within a state. Equally as important, a state-wide implementation of the fresh look opportunity alleviates problems surrounding customer notification and allows the customer a limited, yet reasonable amount of time to avail themselves of competitive alternatives.

c) Customer Notification

Sprint asserts that the ILECs should have the responsibility to notify customers, via a bill insert approved by the relevant state commission, of the commencement of the fresh look period. The notice would be provided thirty days prior to the commencement of the fresh look window and monthly thereafter until the window closes.

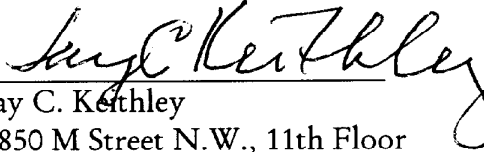
d) Termination Liability

Again, considering what would be most equitable to customers, CLECs and ILECs, Sprint's proposal would limit termination liabilities to the payment of: (1) the ILEC's unrecovered non-recurring costs or capital investments and the difference between the discounted prices in the contract and the standard prices for the services provided; or (2) the termination liability contained in the current contract, whichever is less. Sprint suggests that this proposal achieves the goal KMC allegedly seeks – to remove much of the financial disincentive associated with early termination of long-term contracts. At the same time, however, the proposal provides the ILECs a mechanism to recoup installation or capital costs that may have been incurred to provided the contracted for service. In addition, since the ILEC would receive the difference between the discounted rate under the contract and the rates that would have been in effect if no long-term contract had existed, the ILEC is not unjustly harmed should the customer choose an alternative provider during the fresh look time period.

CONCLUSION

Sprint urges the Commission deny KMC's petition in its entirety while taking this opportunity to consider the adoption of a national fresh look policy.

Respectfully submitted,
SPRINT CORPORATION

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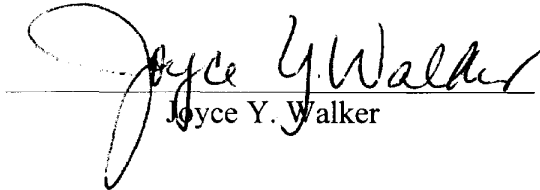
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June 3, 1999

CERTIFICATION OF SERVICE

I, Joyce Y. Walker, hereby certify that I have on this 3rd day of June 1999, served via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Local Telephone Companies" regarding CC Docket 99-142, KMC Telecom Inc., Petition for Declaratory Ruling, filed this date with the Secretary, Federal Communications Commission, to the persons on the attached service list.



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